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Quid Novi

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McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE MCGILL FACULTE DE DROIT

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SCANDAL ROCKS FACULTY

By Joshua Fireman; BCL III

It was December 4, 1992. I had just come in for another long day of exam prep when I found a mysterious note in my LSA box. It read, "Meet me in the Pit at 2:00 - Papa Bear." For those of you in the dark, Papa Bear is one of my most faithful informants within the Faculty of Law student body. When a scandal starts to brew, Papa is usually right there, stirring the pot. I figured if this mug wanted to see me so close to exams, he must have one hot tip for me.

Sure enough, at the appointed time, Papa was there, nonchalantly pretending to be studying. I approached him with my usual stealth, and proceeded to make small talk. But Papa was in no mood to

talk. He just passed some crumpled up pieces of paper to me, and went on his way. I then, unassumingly, went to read the pages in the one place where I knew I would not be disturbed - the men's bathroom in the Pit.

What I read both shocked and frightened me to the very core of my fragile, sensitive being. I was holding in my hands the law school equivalent of the Watergate tapes. "So," I thought to myself, "this must be what Woodward and Bernstein felt those many years ago." Careful to maintain my cover, I flushed twice and continued to read a set of papers so hot that I expected the fire detectors to go off at any moment.

Once I had processed the information

before me, I left the bathroom, careful to wet my hands, as not to arouse anyone's suspicions. I couldn't believe my luck. I had in my hands the first concrete proof that the oft-rumoured but unconfirmed CONE (Compulsive Obsessive Notetaking Elitists) organization actually existed!

For years, there had been suspicions that a top secret NTC group existed within the Faculty of Law. It had been rumoured that its members swore blood oaths never to divulge any information about the existence of the group, their co-conspirators, or their work. They were believed to function under a sense of honour and duty much like the Mafia and the Yakuza - with retribution just as swift and decisive against members who fail to tow the

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INCORPORATING THE LSA - A REFERENDUM

By Nathalie Goldin
LSA president

At the end of this month, there will be a referendum at the Faculty of Law on the issue of whether to incorporate the Law Students' Association (LSA). All of us students will have the opportunity to vote during the last week in January, probably on Monday January 25th, or Tuesday, January 26th.

Why must we have such a referendum? In the spring of 1992, the LSA signed a Memorandum of Agreement with McGill University, in which the LSA's relationship with the University was outlined and defined. Such things as the use of the "McGill" name, logo, the collection of student fees, insurance, liquor permits etc. are regulated. As part of the

agreement, the LSA undertook to hold a referendum on the issue of incorporating the LSA. If the majority of students voting, vote for the incorporation of the LSA, then, the LSA will be "LSA Inc." Otherwise, everything will continue as usual.

At present, there are a few non-incorporated student associations on campus, such as in engineering and in medicine. The other student associations will have to hold a similar referendum in their respective faculties in the next few years.

During the next few weeks, the pros and cons of incorporation shall be discussed in articles in the Quid and in an informal Question/Answer period.

I wish you all the best of luck in 1993 and hope that you have a great term!

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McGILL UNIVERSITY

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LAW LIBRARY

ANNOUNCEMENTS

NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDGES - 1993 FELLOWSHIP

The National Administrative Law Judges Foundation is soliciting applications for its 1993 Fellowship in Administrative Law. The candidate selected as 1993 Fellow will prepare an original article for publication and will deliver a 50-minute oral presentation at the Annual Meeting and seminar at the NAALJ. Applicants should submit a detailed outline of the proposed article, together with the writing sample, CV and list of publications by February 15, 1993. Please address applications and enquiries to:

Judge Edward Schoenbaun
National Administrative Law of Judges Foundation
c/o The National Centre for the State Courts
300 Newport Avenue
Williamsburg, Virginia 23/87-87982
U.S.A.

GRADUATION

- Don't forget to fill out your comment sheet for the yearbook. If you don't have the form you can get one from Tina Hobday, Alexandra LeBlanc or Alexandra Gillespie.

TEAM CAPTAINS & CLUB PRESIDENTS

- if you want a group photo of your club or team to appear in the yearbook, please leave a note with your name, telephone number and name of club in the Res Ipsa Loquitor box at LSA before January 22.

ANNIE MACDONALD LANGSTAFF WORKSHOP

- presents Professor Marie-Andrée Bertrand d' Ecole de Criminologie; Centre international de criminologie comparée, who will speak on "Perspective féministe sur le contrôle criminel de la pornographie". The workshop will be held January 20, 12:30 p.m. in room 202.

USED BOOK SALE

-The Environmental Law Associations Used Book Sale is taking place this week (Jan. 18-22) beside the LSA Bookstore whenever the bookstore is open. Bring your used texts and/or casebooks if you want us to sell them for you (for a \$3 fee; you can keep the rest). If you need texts or casebooks for this term, come and see whether you might be able to get them second-hand at the Used Book Sale.

THE MCGILL ABORIGINAL LAW ASSOCIATION

- presents NO ADDRESS a film from the National Film Board of Canada (1988) by Alanis Obomsawin. No Address is a film about the experience of Native youth who come to Montreal in search of a better life. Ms. Obomsawin, a filmmaker whose various films advocate social reform and examine Native life in Canada, will be present to introduce the film and for discussion afterward. It will be held on January 20th, in the Moot Court. It is from 12:30 till 2:00 p.m. and entrance is free (donations are appreciated).

LAWYERS FOR SOCIAL RESPONSIBILITY

- invite you to hear the Palestinian Solidarity Committee of McGill's perspective on the human rights situation in the Occupied Territories. This will be held on January 20th at 13:30 pm in room 201 (see an article in this *Quid* for more information).

FORUM NATIONAL

-will held a meeting on January 20th, at 12:30. Room t.b.a. Preparation for upcoming visit of Canada's U.N. representative.

IMPORTANT NOTICE

THE COMPUTER LAB WILL BE CLOSED ON THE FOLLOWING DAYS AND HOURS:

JANUARY 18-21	from 9:30 - 12:30 and from 14:00 - 17:00
JANUARY 22	from 9:30 - 12:30
JANUARY 27	from 9:30 - 12:30
JANUARY 29	from 9:30 - 12:30
FEBRUARY 1	from 9:30 - 12:30

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Rédactrice-en-chef/Editor-in-chief:
Maaïke de Bie
Directeur artistique/Artistic Director:
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Alexandra Gillespie
Rédacteurs/Editors:
David Abitbol; Paul Brown; Harry Dikranian; Greg Moore; Andreas Sautter; Jay Sinha and Marie-France St-Amour.
Production:
David Abitbol; Harry Dikranian; Josie Duan; Denis Guénette; Marie-France St-Amour; Andreas Sautter; Jay Sinha.

ON LEARNING TO BE A GOOD LAWYER

By Stephen Lloyd; Nat IV

I have always been troubled by the following conundrum. Lawyers are consistently reviled by popular culture. Not just teased, in the way we might tease a C.A. as being a geeky beancounter, or an engineer as being a stolid plumber, but actually reviled. Have you ever seen one of those books in the Coles "Humour" section on "1001 Uses for a Dead Waiter", "Why We'll be Okay Once We Kill all the Farmers"? Nope. But these kind of things are written regularly about our fine profession.

On the other hand, whenever I quietly mumble to a new acquaintance (and only after vigorous interrogation) that, "yeah, I'm in law school", a predictable look of honest respect still flashes across the other person's face.

Why are lawyers in general seen as so bad, yet so immensely respected in some cases? Why do people generally give us law students the benefit of the doubt, in assuming that we at least have the potential to be one of the "good lawyers", the respected ones? It certainly seems that these good lawyers must exist somewhere, as, judging from those grudging looks of respect, the public opinion case against the legal profession has not been completely closed. Do people still dream of, or maybe even know of, a lawyer of the stature of Atticus Finch in To Kill a Mockingbird, one who earns the respect of his or her society?

I really hope so. Otherwise, what are we doing here, some 500-strong learning to be a part of a profession that is universally ridiculed? Surely we didn't all come to law school on the reasoning that, if it is so hard to get in, it must be a good deal. It's also very hard, nigh impossible, to get tickets to a Mettallica concert.

Surely we are not all here learning to be lawyers so that we can earn the big bucks, at the "minor" cost of becoming the hapless fodder for society's "dead lawyer" joke books.

I, like others, have been wrestling with

these demons for the last three and a half years. Call me quaint, but I like to think that, once I'm finished this gruelling pregame warm-up, I will be able to contribute something to society that will warrant those fleeting looks of respect. If that is my goal, has law school been a waste of time?

Meanwhile, while I have been fiddling away with this and other dilemmas for seven semesters, the flames are starting to lick at the tinder-dry marble of the Coliseum. Graduation day draws near, a job at some place with a comma in its name is about to minimize my suntan this summer, and I'm almost too old to begin seriously preparing for my alternate career: a junk-throwing, hometown crowd-pleasing, lefthanded middle reliever for the Montreal Expos. It is time to get a grip.

Fortunately, while putting off studying for my Public International Law exam last month, I think I finally managed to work those demons into a three-point pin, or at least manhandle them with a serious pile-driver.

I was flipping through TIME magazine, when I came across a short, one page article on the history of Somalia, and how it got itself into the mess it is in now. Suddenly it struck me that just reading that one page was immensely more helpful for understanding what, if any, action the world should take in Somalia than my whole 958 page International Law (Chiefly as Interpreted and Applied in Canada) book. Yet, I just spent a whole semester of my life (a semester that could have been used in working on my split-fingered changeup) learning about the abstract rules on when it is "legitimate" for one nation-state to transgress the territorial sovereignty of another.

Public International Law may be an extreme example, but it does serve to illustrate what it is that we really learn during our stay at the Peel Street Cloisters. We learn

1) a vast grab-bag, accumulated over the

centuries of "clever tricks", thought up by judges and lawyers, which serve to resolve and avoid problems created through the interactions of people and institutions, problems that just won't solve themselves, and

2) how to perpetuate the equally clever trick of conning both governments and the public into believing that

a) our clever tricks are the way to reduce the friction between these entities, and that b) they should therefore leave us alone to settle disputes as we please, train the members of our ranks however we please, and charge whatever we want for the service.

After all, what else is s. 96 of the Constitution Act but a concession by the government, and by extension the people, to that merry band of lawyers that constitute the "legal system", of monopoly rights over the job of solving the country's inter-entity problems?

So we are here to learn four years' worth of clever tricks (in McGill's case, clever tricks from many lands) that will help solve the problems between the government's police and David Milgaard, will help prevent problems between firms fighting out a merger on Bay Street, and will hopefully do a little of both - solving and preventing - with respect to the problems of Canada's aboriginal community.

"Principles of fundamental justice", the "reasonable man" standard of care, the "fiduciary duty" - these are all clever tricks that have worked before for the legal system in juggling competing interests.

I guess that's not so bad - just learning a set of clever, but apparently useful tricks. So what if there is no time in the curriculum to follow up on these tantalizing historical glimpses in order to think up the clever trick in the first place. Pick up on the rule, and get on to the next topic.

So what if there is only space enough in the program for 6 credits in non-law courses like Chemistry, English Literature, or Abnor-

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Martineau Walker

would be pleased to accept your application for an articling position with our firm.

While our primary objective is to fill positions for the 1995 and 1996 articling periods, we will consider all applications.

We would appreciate receiving your *curriculum vitae* no later than February 15, 1993 to the attention of Me Marie Giguère at the address indicated below.
Interviews will be held after March 1, 1993.

We also invite you to the Martineau Walker Coffee House to be held in the Common Room on January 21, 1993, from 5pm to 8pm.

Information packages concerning our firm are available at the Student Affairs Office. Should you have any further questions concerning the firm or our hiring process, or should you require any other assistance, please contact:

Me Dimitri Mastrocola (397-4385)

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procédera prochainement au recrutement d'étudiants pour les stages 1995 et 1996.

À tous ceux et celles d'entre vous intéressés à soumettre leur candidature:

Nous apprécierions recevoir vos *curriculum vitae* avant le 15 février 1993, à l'attention de Me Marie Giguère à l'adresse ci-dessous.

Les entrevues se dérouleront à partir du 1er mars 1993.

Nous vous invitons également à un *Coffee House* Martineau Walker qui aura lieu au Common Room le 21 janvier entre 17h00 à 20h00.

Une brochure concernant notre cabinet et le stage est disponible au Bureau des affaires étudiantes. Si vous avez des questions concernant notre cabinet, notre procédure d'embauche, ou tout autre sujet, veuillez communiquer avec:

Me Dimitri Mastrocola (397-4385)

MARTINEAU WALKER

Avocats • Advocates
800 Place Victoria
C.P./P.O. Box 242
Montréal, Canada
H4Z 1E9

On Learning To Be A Good...
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mal Psychology. You can't really be a lawyer if you don't know all the clever tricks in the law of Successions and Security on Immoveables.

We have to specialize in today's global economy, if we are going to survive, and if Canada is going to remain competitive internationally. Specialize. Specialize. Our job as lawyers is simply to rummage around in the big legal grab-bag until we find the best clever trick in each situation. With our clever ticks, we grease the interacting cogs of the diverse groups in today's society, and in that way make Canada a clean place, a safe place, and a happy place to work in.

So if you want to be a good lawyer, learn as many clever legal tricks as you can, and learn them well, so you will have lots of grease, with just the right viscosity, for those sharp-edged cogs of the real economy.

But stop! This "specialize to survive in today's global economy" argument, if carried to its logical conclusion, is a problem.

If we spend our four years buried in the warm, womb-like folds of "the law", i.e. that body of clever tricks from many lands that have all worked before, we, as lawyers, will certainly share a common culture, and will get along famously together. But will we really be that adept at solving and preventing the problems of tomorrow?

To my mind, an emphasis on simply mastering the set of clever tricks that is the law can only lead to three results.

1) At best, it will lead to lawyers being seen as mindless drones, who simply characterize everyday problems in legal terms, then mechanically apply the "timeless" ideas of the past.

2) A slight variation on 1): it will lead to a public perception of lawyers as twits who arbitrarily apply one of several possible antiquated clever tricks to a given situation, regardless of the fallout and the implications for "justice", simply because "it's the law".

3) At worst, it will lead to lawyers being seen as mere foot soldiers for their powerful clients, lawyers who then compete with each other in bad faith battles of clever tricks - a Machiavellian match-up of egos and big dog eat little dog.

Whether or not the public perception simplifies the reality of what lawyers do, you just have to add water to any of these scenarios, or a combination of all three, and you've got 15 bestseller "dead lawyer" joke books.

Even more importantly, however, we may find that by focusing exclusively on the clever tricks themselves, these tricks may start to not work so well any more, and that therefore our s.96 monopoly on solving the country's problems gets harder to justify.

In order to fully understand, solve, and prevent the problems that go along with societal and inter-societal interactions, lawyers have to know both: the relevant "law", and the important substantial information surrounding the problem. To be a good lawyer, you have to fully grasp the biological and psychological factors that govern individuals' behaviour, the

economic forces that dictate the actions of firms and governments, and the raw elements of political power and brute force that influence, in often subtle ways, interaction at every level.

Is this another hackneyed diatribe condemning admission into law school directly from CEGEP? Of course. But it is also a plea for a wider understanding of the role of lawyers, and a fresher approach to the study of "the law".

I remember reading that when Bertha Wilson retired from the bench, she said that she most looked forward to finally being able to read something "other than the law". Yikes. How can lawyers successfully grapple with societal dilemmas, especially those on the grandiose Supreme Court scale, by simply reading about past recordings of clever legal tricks?

The law is not distinct from other disciplines and the "real", non-legal world. I think that is why we respect a good lawyer so much. She is able to fully master the subtleties and background of the problem itself, and combines that understanding with a full knowledge of the clever tricks of the law: an intellectual double whammy.

Why was Atticus Finch such a respected hero in To Kill a Mockingbird? It was not just for his brilliant rhetoric and clever courtroom antics. He also fully understood the problem of the persecution of a black man in the Southern society of his time. Because of that understanding, he was a good lawyer. It enabled him to apply his clever tricks in a way that, just for a moment, was able to achieve that elusive goal we call justice.

LSR HOSTS PRESENTATION ON HUMAN RIGHTS IN THE OCCUPIED TERRITORIES - A MCGILL PERSPECTIVE

By Tara Ashtakala; BCL I

Amid the flux of presidents in Washington, the gains and losses of war in Yugoslavia and the cycle of famine in the horn of Africa, the Middle East continues to add its share of upheaval to the fragile balance of the global order, most recently with the deportation of over 400 Palestinians from the Occupied Territories. While it appears to the world that a balanced solution to the Palestinian-Israeli equation remains obscured in the complexity of its numerous variables, McGill students have the benefit of the presence of a number of groups on

campus concerned with the conflict which help clarify the interests of the players involved. One such organization is the Palestinian Solidarity Committee (PSC) McGill, which disseminates information, sponsors speakers and holds fundraising activities to support needy Palestinians. This week, Lawyers for Social Responsibility (LSR) will be hosting a presentation by the president of that club: Yousef Arafat (no relation to the PLO chairman), a third-year student of Political Science specializing in the Middle Eastern Studies, Yousef Arafat will show a video by Amnesty International

about the human rights situation in the Occupied Territories and will describe the objectives and activities of the PSC, including the upcoming four-day hunger strike that members of the group and other McGill students will observe in support of the deportees.

Regardless of which side of the Israeli-Palestinian scales one's positions weighs upon, LSR encourages all students and faculty to come hear the PSC's perspective on **Wednesday, January 20th, at 13:30 p.m. in room 201.**

LAPUTA V. PERCY KEWTED

By Randy Hahn; LLB II

The following extract is from a decision that recently appeared in the Laputa Law Reports. Laputa is a small south sea island that due to a variety of historical influences, some of them rather obscure, looks to Canadian jurisprudence for guidance and direction as to how their own laws might be interpreted and applied.

The Chief Justice: The facts of this case are straightforward and undisputed, Mr. Percy Kewted is a self-described pamphleteer. He recently wrote a pamphlet entitled "Why We Should Not Pay Attention to the Laputa National Police". Unfortunately for Mr. Kewted, the Laputa National Police paid attention to this pamphlet. They confronted Mr. Kewted while he was distributing copies of this pamphlet on a public street. They asked him to hand over to them all the copies he had in his possession. He refused. The police then searched Mr. Kewted against his will. An examination of his briefcase yielded many more pamphlets with various titles, but all with a general theme of hostility toward the Laputa National Police. The police were continuing to search Mr. Kewted when one of the officers noticed that Mr. Kewted seemed to be chewing on something. The officer grabbed Mr. Kewted by the throat and forcibly retrieved from his mouth a half-eaten piece of paper on which was written a list of names under the heading "People We Can Count on in Our War Against the Laputa National Police". Mr. Kewted was charged with sedition.

The accused claims that his rights as outlined in the *Laputa Charter of Rights and Freedoms* have been infringed. Specifically, it is asserted that in acting in the way they did, the police breached Mr. Kewted's right to freedom of expression, impinged upon his right against unreasonable search and seizure, and by their actions brought the administration of justice into disrepute.

In assessing Mr. Kewted's arguments I have been greatly assisted by the jurisprudence surrounding the *Canadian Charter of Rights and Freedoms*. Our law in Laputa have a remarkable affinity with laws in Canada, and so I am grateful to be able to draw on the expertise of Canadian authorities who have so skillfully explored and discussed the meaning of their Charter.

It will be recalled that the Canadian Charter was enacted by legislators who decided that the rights of the individual needed to be safeguarded against the possible tyranny of the majority. So representatives of the provincial legislatures and the federal Parliament got together to discuss this and other matters. A majority of them decided that the Canadian Charter should be enacted as a means of frustrating the whims of the majority. A minority believed otherwise, but the Supreme Court of Canada ultimately declared that the view of the majority of governments as to how to clerk the intrusion of majorities should prevail.

But how is one to interpret the guarantees contained in the Canadian Charter? For example, s.2 provides that everyone shall have the right to free expression, but s.1 notes that such a right is subject to "such reasonable limits prescribed by law as can be demonstrably justifiable in a free and democratic society". What does this mean? No one seemed clear on the matter, so naturally the courts were invited to pronounce on what this phrase meant. Eventually the Supreme Court of Canada ruled on the matter. The court is comprised of nine of the most talented and accomplished jurists in the country. The judges involved had the benefit of skillful arguments eloquently presented by some of Canada's leading advocates. An excellent library containing all the noteworthy books, judgments, treatises, and analyses on all important legal questions was at their disposal as were several law clerks with impeccable academic credentials. The great books were consulted, the wisdom of legal scholars of past generations duly pondered, and emerging trends in contemporary legal theory carefully recorded. The judges thought long and hard about what exactly the phrase meant. Finally in *R. v. Oakes* (1986) they explained that for a measure to be demonstrably justifiable in a free and democratic society, it must be sufficiently important to override a constitutional guarantee and the means chosen must be reasonable and demonstrably justifiable. The means will be demonstrably justified if the measures are rationally connected to the objective, the right is impaired as little as possible, and there is an appropriate level of proportionality between the effect and the objective. This was of enormous help in that prior to this ruling I had thought that maybe a measure that was not of sufficient importance to override a guarantee, that had no rational connection to the objective sought, that did not impair the right as little as possible and where the ends and means were not appropriately proportionate might indeed be allowable, so I was thrilled for the incredibly helpful guidelines provided by the Supreme Court of Canada.

The Canadian Charter also ensures protection against unreasonable search and seizure. There was not widespread agreement as to what exactly this guarantee meant. So the decision in *Hunter v. Southam* (1984) was very welcome indeed. With marvelously acute reasoning and analysis the Supreme Court of Canada explained that a search will be reasonable if it is authorized by law, if it protects a state interest that is demonstrably superior to the individual interest infringed, and if it is carried out in a reasonable manner. Some of my colleagues had previously wondered whether a search that was not authorized by law, where the state interest was inferior to the individual interest infringed, and which was carried out in an unreasonable manner might be allowable under the Charter, so we were so pleased that the great minds of the Supreme Court of Canada set us straight on the matter.

Finally, the Canadian Charter prohibits actions which may bring the administration of justice into

disrepute. How are we to tell when the magnificent machinery of the administration of justice is to be tarnished and brought into disrepute? Once again the Supreme Court of Canada faced this perplexing problem front and centre when in *R. v. Collins* (1987) it considered the matter of evidence obtained in a dubious manner; it quoted with approval the view of Professor Yves Morissette who suggested that this issue is best understood by asking "would the admission of the evidence bring the administration of Justice into disrepute in the eyes of the reasonable man(sic), dispassionate and fully apprised of the circumstances in the case?" This is penetrating analysis indeed, and we in Laputa are privileged to benefit from such a sharp insight. There had been some suggestions from some Laputian commentators that perhaps the measure of whether justice has been brought into disrepute is the anticipation of what the unreasonable man, extremely passionate, and wholly ignorant of the circumstances of the case might think. Accordingly it was reassuring for the Canadian Supreme Court to help guide us through this difficult legal terrain.

The Canadian jurisprudence I have reviewed is splendid in all kinds of ways, but is perhaps too complex for simple Laputian circumstances. I propose the following test: whenever the Charter is allegedly breached the court should simply decide whether there is a breach and if so whether the breach is reasonable. I am confident that this approach is consistent with the tone and tenor of the Canadian jurisprudence and is no less intellectually rigorous or precise. It will be apparent that the Canadian jurisprudence has been of huge benefit to us in Laputa.

Scandal Rocks Faculty

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if you so much as breathe a word of this to anyone, it'll be the last breath you take." The shadowy figure departed through the bedroom window as silently as it had entered, leaving Sif covered in sweat and filled with the kind of fear that eats away at your insides until you've got nothing more to feed it.

Lady Sif was at breaking point when she told me this. It didn't matter any more, she said. Whatever they did to her, it couldn't be more worse than what she had gone through already. I slapped her hard to calm her down. She had Thor to protect her now, and she had me on her side, busting my chops to bring the CONE Heads to their knees. I knew that there had to be a lot more innocent victims of the CONE Heads out there; good, decent people living in fear solely on account of being assiduous note takers. They were out there, waiting to tell their stories the same way Sif had told hers. And I'm going to find them.

Mark my words, CONE Heads - this time, you're going down!